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27
28 THE UNITED STATES DISTRICT COURT
1 FOR THE NORTHERN DISTRICT OF CALIFORNIA

20 DIANA LOPEZ,

21 Plaintiff,

22 vs.

23 WHIRLPOOL CORPORATION;
24 AMCO INSURANCE COMPANY;
25 and DOES 1 to 100, INCLUSIVE,

26 Defendants.

27 CASE NO. 3:11-cv-05421-EMC

28 [PROPOSED] ORDER GRANTING
THE PARTIES' STIPULATION
FOR ENTRY OF A
PRELIMINARY INJUNCTION
ENJOINING THE CALIFORNIA
SUPERIOR COURT FOR THE
COUNTY OF ALAMEDA, HON.
GAIL BEREOLA, FROM
PROCEEDING ANY FURTHER IN
THIS CASE

1 AMCO INSURANCE COMPANY,
2 Counter-Claimant
3 vs.
4 DIANA LOPEZ,
5 Counter-Defendant

6
7 This Matter came before the Court on the Parties' Stipulation for Entry of a
8 Preliminary Injunction Enjoining the California Superior Court for the County of
9 Alameda, Hon. Gail Bereola, from Proceeding any Further in this Case.

10 After having granted AMCO Insurance Company's ("AMCO") *Ex Parte*
11 Application for a Temporary Restraining Order Enjoining the Superior Court on
12 August 31, 2012, and after having reviewed the Parties' Stipulation for Entry of a
13 Preliminary Injunction, the Court finds and concludes as follows:

14 1. This case was properly removed from the Superior Court of California
15 for the County of Alameda, Hon. Gail Bereola, to this Court on November 8, 2011.
16 Nonetheless, on July 13, 2012, the Superior Court allowed Plaintiff to file a First
17 Amended Complaint in the Superior Court to join 911 Remediation, Inc., ServPro
18 of NE San Jose, and AMCO as defendants to case number RG11600794, the same
19 action that has been properly removed to this Court. The Superior Court's attempt
20 to continue exercising jurisdiction over this case is a direct violation of 28 U.S.C. §
21 1446(d) because this Court has not remanded it back to the Superior Court.

22 2. This will cause immediate, serious and irreparable harm to AMCO,
23 because if AMCO fails to file a responsive pleading or motion to Plaintiff's
24 amended Complaint in the Superior Court, AMCO will risk having the Superior
25 Court enter a wrongful default judgment against it. Furthermore, the Superior
26 Court's action is in direct contravention of Article III, Section 2, Clause 1 of the
27 United States Constitution, as well as 28 U.S.C. § 1446(d).

3. Unless restrained by this Court, the Superior Court has indicated that it will continue exercising jurisdiction over this case.

4. In view of the above, this Court concludes that good cause exists to grant the Parties' Stipulation for Entry of a Preliminary Injunction Enjoining the California Superior Court for the County of Alameda, Hon. Gail Bereola, from Proceeding any Further in this Case.

WHEREFORE, PURSUANT TO STIPULATION, IT IS ORDERED that the California Superior Court for the County of Alameda, Hon. Gail Bereola, Plaintiff, and their agents, officers, assigns, and all persons acting in concert with them are hereby enjoined and restrained from proceeding any further with case number RG11600794 in the Superior Court unless or until this case is remanded.

THIS ORDER shall be immediately served upon Plaintiff and the California Superior Court for the County of Alameda, Hon. Gail Bereola. (by Amco)

September 24, 2012

Done in Open Court this _____

